

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,
vs.

Case No. 05-80638
HON. LAWRENCE ZATKOFF

JAHMAL WHITFIELD,

Defendant.

OPINION AND ORDER

AT A SESSION of said Court, held in the
United States Courthouse, in the City of Port Huron,
State of Michigan, on June 27, 2006

PRESENT: THE HONORABLE LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

This Opinion is issued following the Defendant's oral motion for new counsel on the morning of the first day of trial and the Court's denial of such motion.

I. BACKGROUND

A. *Facts*

The underlying facts of this case are set forth in this Court's April 28, 2006 Opinion (Docket #30).

B. *Relevant Procedural History*

Defendant was indicted in this Court on July 12, 2005, and charged with being a felon in possession of a firearm, possession with intent to distribute marijuana and possession of cocaine base. In October 2005, the Court received a motion to withdraw for Defendant's initial attorney in

this matter, wherein the attorney cited a conflict of interest involving the attorney who represented Defendant in a related state court matter. In the course of the following seven months, new counsel was appointed for Defendant in January 2006, Defendant's Motion to Suppress was heard in April 2006, and Defendant wrote numerous letters to his attorney and this Court during the entire period. On April 28, 2006, this Court denied Defendant's Motion to Suppress. On May 15, 2006, a hearing was held for the purpose of taking a guilty plea or setting a trial date for this case. When Defendant did not tender a plea on May 15, 2006, a trial date of June 19, 2006, was announced on the record, with jury selection set for June 15, 2006. On June 15, 2006, a jury was selected.

II. ANALYSIS

Although Defendant was before this Court on many occasions prior to the first day of trial, Defendant never asked this Court for a new attorney to replace his current counsel (who has been on the case since January 13, 2006). Significantly, Defendant did not ask the Court for new counsel at the hearing on April 13, 2006 or the final plea conference date of May 15, 2006. The Court understands that Defendant may have raised the issue before the Magistrate Judge after the jury was selected on June 15, 2006; however, this was not communicated to the Court by Defendant, any of the attorneys or any other person prior to the first day of trial.

Having reviewed the correspondence that Defendant sent to the Court prior to the first day of trial, as well as having reviewed the letters provided by Defendant allegedly demonstrating his prior requests for new counsel that were sent to others (and/or the Court), the Court cannot find that Defendant asked for new counsel at any time in any of those letters. The Court notes that Defendant's letters were sent to the Probation Department, the Court, Defendant's counsel and even the Michigan Attorney Grievance Commission, but no request for a new attorney was ever presented

to this Court.

For the foregoing reasons, the Court concludes that Defendant's request on the morning of the first day of trial is for but one purpose: to delay the proceedings in this matter. Defendant has had the same attorney for the past five months and had two court appearances before this Court (and one before the magistrate judge) with such attorney in the two months prior to trial. In addition, the Court finds that Defendant has not argued or demonstrated, nor has defense counsel asserted, that Defendant and defense counsel have suffered a breakdown in communication or that communication was so lacking as to prevent Defendant from asserting the best defense possible in this case.

Accordingly, as stated by the Court on the record on June 19, 2006, Defendant's oral motion for new counsel is DENIED.

III. CONCLUSION

For the reasons set forth above, the Court hereby DENIES Defendant's oral motion for new counsel, first presented for the Court's consideration on the first morning of trial, Monday, June 19, 2006.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: June 27, 2006

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on June 27, 2006.

s/Marie E. Verlinde

Case Manager

(810) 984-3290